

REMARKS

Applicant respectfully requests entry and consideration of the above amendments even though presented after a final rejection. Applicant submits that the amendments do not raise new issues or require a new search. Further, entry and consideration of the amendments may isolate issues for potential allowance or appeal. The amendments were not presented earlier in the prosecution due to a better understanding of the Examiner's position as reflected in the latest Office Action.

Summary

Claims 1-7, 9-17 and 19-41 stand in this application. Claims 8 and 18 have been canceled without prejudice. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

35 U.S.C. § 103

At page 2, paragraph 2 claims 1-7, 9-17 and 19-41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dyszel (Handspring Visor for Dummies) in view of Microsoft Windows Version 5.1 (hereinafter "Windows"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

Applicant respectfully submits that the Windows reference is not applicable as prior art for the current application. The Windows reference contains eight screenshots taken from the Examiner's computer. There is no indication that the screenshots were

taken before the filing date of 07/08/2003. The copyright on the Windows software spans the years 1981-2001. The features of the Windows operating system, however, have changed and evolved over that twenty-year period. Applicant respectfully submits that screenshots taken of the current version of the Windows operating system can not be assigned a date for purposes of qualifying as prior art based upon the twenty-year span of copyright coverage. Therefore, Windows is disqualified prior art and can not be used in a 35 U.S.C. § 103(a) rejection against the current claims.

Applicant respectfully submits that Windows is relied on by the Examiner, in part, to support the 35 U.S.C. § 103(a) rejections for each of the claims 1-7, 9-17 and 19-41. Furthermore, the remaining reference, Dyszel, fails to disclose all the elements or features of the claimed subject matter. Accordingly, Applicant respectfully requests removal of the obviousness rejections with respect to claims 1-7, 9-17 and 19-41.

Furthermore, the Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

As recited above, to form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest every element of the claim. *See* MPEP § 2143.03, for example. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 2, 3, 4, 12, 13, 14, 23, 24, 25, 33, 34 and 35. Therefore claims 2, 3, 4, 12, 13, 14, 23, 24, 25, 33, 34 and 35 define over Dyszel and Windows whether taken alone or in combination. For example, claim 2 recites the following language, in relevant part:

wherein said user navigation input is obtained from a 5-way navigation tool.

As correctly noted in the Office Action, the above-recited language is not disclosed by Dyszel. According to the Office Action, the missing language is disclosed by Windows at screenshot 3. Applicant respectfully disagrees.

Applicant respectfully submits that Windows does not teach or fairly suggest the language cited above. The Office Action states that screenshot 3 of Windows shows a virtual keyboard that contains left/right, up/down and “Enter” keys. By way of contrast, the claimed subject matter obtains input from a 5-way navigation tool. A 5-way navigation tool is a specific type of button commonly used on mobile electronic devices and is defined within the Specification at page 19 lines 5-16. A computer keyboard, either physical or virtual, does not disclose a 5-way navigation tool. Therefore, Windows fails to disclose, teach or suggest the missing language. Consequently, the Dyszel and

Windows, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 2.

Claims 3, 4, 12, 13, 14, 23, 24, 25, 33, 34 and 35 recite features similar to those recited in claim 2. Therefore, Applicant respectfully submits that claims 3, 4, 12, 13, 14, 23, 24, 25, 33, 34 and 35 define over Dytsel and Windows for reasons analogous to those presented with respect to claim 2. Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claims 3, 4, 12, 13, 14, 23, 24, 25, 33, 34 and 35.

Conclusion

For at least the above reasons, Applicant submits that claims 1-7, 9-17 and 19-41 recite novel features not shown by the cited references. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

Appl. No. 10/616,091
Response Dated August 15, 2007
Reply to Office Action of May 15, 2007

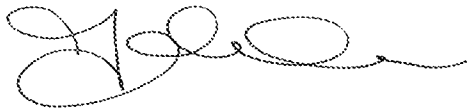
Docket No.: 1070.P3821
Examiner: Zhou, Ting
TC/A.U. 2173

It is believed that claims 1-7, 9-17 and 19-41 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present patent application.

Respectfully submitted,

KACVINSKY LLC

A handwritten signature in black ink, appearing to read 'John F. Kacvinsky', with a long horizontal line extending to the right.

John F. Kacvinsky, Reg. No. 40,040
Under 37 CFR 1.34(a)

Dated: July 30, 2007

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